

REMARKS

This Request For Reconsideration is being filed in response to the outstanding Office Action, dated December 12, 2002 in which the Examiner rejected claims 1-6 and 8-24, all of the claims currently pending in the subject application.

Rejection Under 35 U.S.C. § 103(a)

The Examiner has rejected claims 1-6 and 8-24 of the present application under 35 U.S.C. § 103(a) over U.S. Patent No. 6,332,134 to Foster (the "Foster reference") in view of U.S. Patent No. 5,867,495 to Elliott et al. (the "Elliott reference"). The Foster reference was filed on March 9, 2000 and claims priority to two (2) provisional patent applications; namely, U.S. Provisional App. No. 60/162,651, filed November 1, 1999, and U.S. Provisional App. No. 60/174,299, filed January 3, 2000. The Foster reference issued as a patent on December 18, 2001. The present application claims priority to U.S. Provisional Appln. Serial No. 60/157,774, filed on October 5, 1999.

On January 13, 2003, Applicant's representative contacted the Examiner telephonically in an attempt to have the Foster referenced removed as a reference to the present application. Applicant's representative explained that because the present application claims priority to U.S. Provisional App. No. 60/157,774, filed October 5, 1999, the Foster reference was not prior art to the present application under 35 U.S.C. §§ 102, 103. In response, the Examiner requested that Applicant file a written response to the outstanding office action.

The Foster reference is not prior art to the present application under 35 U.S.C. §§ 102, 103 and, therefore, cannot serve as the basis of a rejection of the claims of the present application. Under 35 U.S.C. §§ 102, 103, in order to be considered prior art, a reference must have an effective date of filing either prior to the date of invention of the subject application (35 U.S.C. §§ 102(a), (e)), or have an effective filing date more than one year prior to the date of the application for the subject application (35 U.S.C. §§ 102(b)). See M.P.E.P. §§ 706.02(a) and 2136.03. The Foster reference fulfills neither of those requirements, because the earliest effective filing date that the Foster reference can claim is November 1, 1999, which is

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subsequent to the provisional priority date of October 5, 1999 of the present application¹. Because Foster is not properly cited as a reference against the present application, Applicant respectfully submits that the obviousness rejection based on the Foster and Elliott references be withdrawn. Accordingly, Applicant respectfully requests that the Examiner remove the Foster reference and withdraw the obviousness rejection.

Conclusion

Applicant has made a diligent effort to place the Application in condition for allowance and respectfully submit that claims 1-6 and 8-24 in light of the amendments and arguments set forth above are in condition for immediate allowance. Consequently, if the Examiner cannot issue immediate Notice of Allowance, the Examiner is respectfully requested to contact the undersigned attorney to discuss the outstanding issues.

Any new and additional fees or charges beyond which are stated in said transmittal letter filed concurrently herewith should be charged to Deposit Account No. 19-4709 as necessary.

Respectfully submitted,

 REC. NO. 48,874

Steven B. Pokotilow
Registration No. 26,405
Attorney for Applicant
Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, New York 10038
(212) 806-5400

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¹ Note that for the purposes of this Request for Reconsideration only, Applicant assumes that the Foster reference is entitled to its provisional priority dates. Applicant reserves its right to challenge Foster's entitlement to the provisional dates, if necessary.